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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID ROBERTS,

Plaintiff,

v.

SENIOR ACCOUNTING, et al.,

Defendants.

Case No. 1:21-cv-00700-SKO (PC)

**FINDINGS AND RECOMMENDATIONS
TO DENY PLAINTIFF’S MOTION TO
PROCEED *IN FORMA PAUPERIS* AND
DISMISS ACTION WITHOUT PREJUDICE**

(Doc. 2)

14-DAY DEADLINE

Clerk of the Court to Assign a District Judge

Before the Court is Plaintiff’s application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. 2.) Because Plaintiff has more than three “strikes” under section 1915(g) and fails to show that he is in imminent danger of serious physical injury, the Court recommends that his application be denied and this action be dismissed.

I. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915

28 U.S.C. § 1915 governs *in forma pauperis* proceedings. The statute provides, “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

1 **II. DISCUSSION**

2 The Court takes judicial notice of four of Plaintiff's prior lawsuits that were dismissed
3 because they were frivolous or failed to state a claim on which relief can be granted:¹ (1) *Roberts*
4 *v. Riverside County Superior Courts*, No. 5:19-cv-00446-VBF-RAO (C.D. Cal. April 15, 2019);
5 (2) *Roberts v. KVSP Investigation Services Unit*, No. 1:19-cv-01055-AWI-SAB (E.D. Cal. Nov.
6 25, 2019); (3) *Roberts v. Huckleberry, et al.*, No. 1:18-cv-01237-DAD-SAB (E.D. Cal. March 10,
7 2020); (4) *Roberts v. CDCR Trust Office*, No. 5:20-cv-00977-VBF-RAO (C.D. Cal. June 17,
8 2020). These cases were dismissed before Plaintiff initiated the current action on April 27, 2021.
9 Plaintiff is therefore precluded from proceeding *in forma pauperis* in this action unless, at the
10 time he filed his complaint, he was under imminent danger of serious physical injury. *See*
11 *Andrews v. Cervantes*, 493 F.3d 1047, 1052-53 (9th Cir. 2007).

12 Plaintiff alleges that "accounting staff" at Wasco State Prison-Reception Center have
13 stolen money sent to him by family members. (Doc. 1 at 3.) He states that his brother mailed him
14 a money order on April 6 but that he has still not received it.² (*Id.*) Based on this, Plaintiff
15 contends that Defendants Gonzales and Villagomez have stolen the money order and others sent
16 to him by his brother and son. (*Id.*) Plaintiff's allegations do not show that he is under imminent
17 danger of physical injury.

18 **III. CONCLUSION, RECOMMENDATIONS, AND ORDER**

19 Based on the foregoing, the Court RECOMMENDS that:

- 20 1. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) be DENIED; and,
21 2. This action be DISMISSED without prejudice to refile upon prepayment of the
22 filing fee.

23 The Court DIRECTS the Clerk of the Court to assign a district judge to this action.

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26 ¹ The Court may take judicial notice of court records. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

27 ² Plaintiff's complaint is dated April 21, 2021. (Doc. 1 at 6.) Given that Plaintiff filed this lawsuit approximately two
28 weeks after the subject incident, it is clear on the face of the complaint that he failed to exhaust administrative
remedies prior to filing suit, as required by the Prison Litigation Reform Act. This provides an independent basis for
dismissal of this action. *See Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014).

1 These Findings and Recommendations will be submitted to the United States District
2 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of
3 service of these Findings and Recommendations, Plaintiff may file written objections with the
4 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and
5 Recommendations.” Plaintiff’s failure to file objections within the specified time may result in
6 waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing
7 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

8
9 IT IS SO ORDERED.

10 Dated: **April 29, 2021**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE